

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION**

In the matter of:)	Complaint No. 98-078
)	
CITY OF)	ADMINISTRATIVE CIVIL LIABILITY FOR
PORT HUENEME)	VIOLATIONS OF THE CALIFORNIA WATER CODE
)	SECTIONS 13264, 13271 AND 13376
)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Port Hueneme (hereinafter City) is alleged to have violated the California Water Code (CWC), for which the Regional Water Quality Control Board, Los Angeles Region (hereinafter Regional Board) may impose civil liability pursuant to Sections of 13271 and 13385 of the CWC.
2. Unless waived, a hearing on this matter will be held before the Regional Board during a public meeting on November 2, 1998, in City of Camarillo, Council Chambers, 601 Carmen Drive, Camarillo, California. The public meeting, during which the hearing will take place, will begin at 9:00 a.m. You and/or your representative(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability, or any other action appropriate as a result of the hearing.

ALLEGATIONS

4. On June 23, 1998, the City Department of Public Works caused a discharge of approximately 24,000 gallons of untreated sewage into a flood control channel, which flows along Channel Islands Boulevard in the City of Port Hueneme. Approximately 8,000 gallons of raw sewage were not recovered from the flood control channel and flowed into Mandalay Bay just north of the intersection of Channel Islands Boulevard and Victoria Avenue, and thence to Channel Islands Harbor. The untreated sewage discharge occurred due to a break in a rusted city sewer line at the intersection of Channel Islands Boulevard and Ventura Road. Impacts from this discharge include: i) a risk to public health and public nuisance resulting from exposure of raw sewage along Channel Islands Boulevard, into the Mandalay Bay and Mandalay Bay neighborhood just north of Channel Islands Boulevard and Victoria Avenue, where homes are linked to the Channel Islands Harbor by a series of waterways; and ii) economic losses resulting from public health advisory against contact with water in the

Mandalay Bay and Channel Islands Harbor for 3 days. Other impacts that may have affected beneficial uses, such as aquatic life, are unknown.

The City is alleged to have violated the following sections of the CWC:

- a. Sections 13264 and 13376, which prohibit discharge of wastes and into waters of the State, except as authorized by waste discharge requirements; and
 - b. Section 13271, which specifies notification requirements for spills of hazardous substances, including sewage.
5. The facts set forth below are the basis for the alleged violations. These facts are based upon: i) a memo, dated June 23, 1998, submitted by City of Port Hueneme, Public Works Department Director to City Manager; ii) press releases, dated June 24, 1998, and June 26, 1998, by the County of Ventura, Environmental Health Division; iii) a fax memorandum, dated June 30, 1998, from City Public Works Director to Regional Water Quality Control Board staff; and iv) several phone conversations between City Public Works staff and Regional Board staff.
- a. The City Department of Public Works owns and operates a sewer system in the City of Port Hueneme. The City's wastewater system connects to the City of Oxnard's wastewater treatment facility.
 - b. On June 22, 1998, a scheduled wastewater shutdown occurred at 11:30 p.m. to accommodate a brine line connection to the City's wastewater system manhole located adjacent to Oxnard wastewater treatment facility. On June 23, 1998, at 3:00 a.m., once the contractor completed the connection, Public Works staff restarted the City's wastewater system and the break occurred. Wastewater was discovered in the street at the intersection of Channel Islands Boulevard and Ventura Road shortly thereafter.
 - c. A City Public Works crew dispatched to the location and discovered a break in the City's 18-inch force main sewer line. The City Public Works crew determined that the top of the 18 inch force main had deteriorated due to hydrogen sulfide (H_2S) gas accumulation along 5 linear feet of exposed pipe, and that a repair clamp could not stop the leak.
 - d. On June 23, 1998, around 6:00 a.m., the wastewater flow started to increase causing a spill into the adjacent flood control channel. On June 23, 1998, at 10:00 a.m., officials at City Public Works notified the County of Ventura, Environmental Health Division that a break in the city sewer line had occurred at about 3.00 a.m. on June 23, 1998. City Public Works estimated that approximately 24,000 gallons of untreated sewage was discharged into the flood control channel.
 - e. The flood control channel runs along Channel Islands Boulevard in the area of the intersection of Channel Islands Boulevard and Ventura Road, and is connected via Victoria Avenue storm drain into a waterway, generally known as Mandalay Bay.

Mandalay Bay is located just north of the intersection of Channel Islands Boulevard and Victoria Avenue and is connected to Channel Islands Harbor.

- f. On June 23, 1998, by 8:45 a.m., City Public Works constructed a dirt berm in the flood control channel to prevent raw sewage from entering Mandalay Bay at Channel Islands Boulevard and Victoria Avenue. City Public Works estimated that approximately 8,000 gallons of raw sewage were not recovered from the flood control channel and flowed into Mandalay Bay and Channel Islands Harbor.
 - g. On June 23, 1998, City Public Works notified the Regional Board and County of Ventura, Environmental Health Division that the sewage discharge was controlled at 8:45 a.m. In order to protect public health, County of Ventura, Environmental Health Division, posted warning signs to advise public to avoid contact with water in Mandalay Bay and Channel Islands Harbor for 72 hours until June 26, 1998.
 - h. The County of Ventura, Environmental Health Division monitored the water at four locations (Victoria Avenue and Channel Islands Boulevard, Peninsula Bridge North, Peninsula Bridge South, and Silver Strand Beach) for evidence of bacteriological contamination on June 23, 1998, June 24, 1998, and June 25, 1998.
 - Samples collected on Tuesday, June 23, 1998, from a sampling station at Victoria Avenue and Channel Islands Boulevard had coliform counts greater than 160,000 (total) and 160,000 (fecal) MPN per 100 mL. Three other monitoring locations (Peninsula Bridge North, South and Silverstrand Beach) did not show elevated levels of coliform bacteria on June 23, 1998.
 - Stations sampled on Thursday, June 25, 1998, did not have abnormally elevated bacteriological levels. Results from the sampling station at the Victoria Avenue and Channel Islands Boulevard had coliform counts of 80 (total) and 40 (fecal) MPN per 100 mL.
 - i. On June 26, 1998, the County of Ventura, Environmental Health Division received results of additional bacteriological water quality sampling, and rescinded the public health advisory against contact with water.
6. Regional Board staff conclude that a discharge of 24,000 gallons of raw sewage occurred which caused a public nuisance and a public health risk in violation of the CWC. Furthermore, according to City's spill report, the City failed to immediately notify the Office of Emergency Services pursuant to Section 13271 of the CWC.

ALLEGED VIOLATIONS

7. Section 13271 of the CWC states that "any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or

on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge.....”

8. Sections 13264 and 13376 of the CWC prohibit discharge of wastes into waters of the State, except as authorized by waste discharge requirements.
9. Section 13265 of the CWC states that “ (a) Any person discharging waste in violation of Section 13264.....is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). (b)(1) Civil liability may be administratively imposed by a regional board.....for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”
10. Section 13385 (a) of the CWC states that “ any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f): (2) Any waste discharge requirements or dredged and fill material permit..”
11. Section 13385 (c) of the CWC states that “ Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
 - a. Ten thousand dollars (\$10,000) for each day in which the violation occurs; and
 - b. Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

PROPOSED CIVIL LIABILITY

12. The total maximum civil liability authorized by the CWC is \$260,000 which includes \$20,000 under Section 13271(c), \$10,000 under Section 13385 (c) (1) and \$230,000 under Section 13385 (c)(2) of the California Water Code.
 - a. Under Section 13271(c), the maximum civil liability could be imposed by the Regional Board for reporting violation is \$20,000. Therefore, the maximum liability under Section 13385(c)(1) of the California Water Code is:
$$1 \text{ violation} \times \$20,000 = \$20,000$$
 - b. Under Section 13385(c)(1), the maximum civil liability could be imposed by the Regional Board for violation of the California Water Code is \$10,000 per day per violation. City of Port Hueneme is alleged to have violated Section 13376 of the California Water Code on June 23, 1998. Therefore, the maximum liability under Section 13385(c)(1) of the California Water Code is:

$$1 \text{ day} \times \$10,000 \text{ per day} = \$10,000$$

- c. Under Section 13385(c)(2) of the California Water Code, the maximum civil liability that could be imposed by the Regional Board for violation of Section 13376 of the California Water Code is ten dollars per gallon of discharge for volumes greater than 1,000 gallons. Therefore, the maximum liability under Section 13385(c)(2) of the California Water Code is:

$$(24,000 \text{ gallons} - 1,000 \text{ gallons}) \times \$10 \text{ per gallon} = \$230,000$$

13. Pursuant to Section 13385(e) of the CWC, the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed: the nature, circumstances, extent, and gravity of the violations; with respect to the violator, the ability to pay; any prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters as justice may require.

- a. Nature, circumstances, extent, and gravity of the violations: City Public Works discharged approximately 24,000 gallons of raw sewage on June 23, 1998, in violation of the CWC, that resulted in three days public health warning in Mandalay Bay and the Channel Islands. In addition, the City failed to notify the Office of Emergency Services as required by California Water Code Section 13271. However, City Public Works notified Regional Board and County of Ventura, Environmental Health Division, installed a temporary sewage by-pass line and implemented an emergency repair plan to contain the spill within the flood control channel to prevent raw sewage entering the Mandalay Bay. Approximately 16,000 gallons of raw sewage was recovered from the flood control channel. Therefore, a reduction from the maximum civil liability is warranted.
- b. The ability of the discharger to pay: City of Port Hueneme is a very small community. Payment of the total maximum civil liability authorized by the CWC would impose a financial hardship on City. Therefore, a reduction from the maximum civil liability is warranted.
- c. Prior history of violations: The Regional Board is not aware of a prior history of violations by the City. Therefore, a reduction from the maximum civil liability is warranted.
- d. Degree of culpability: As the owner and operator of the sewer system, City Public Works assumes responsibility for maintenance of the sewer system. The 18- inch force main sewer line was approximately 36 years old and deteriorated beyond repair. The City had identified the deterioration at the pipe break area in 1994, but concluded that the condition was acceptable. In 1995, City started implementation of a maintenance program to replace air release valves at high points of pipeline to prevent pipeline from hydrogen sulfide corrosion. This program was completed 30 days before the incident occurred. However, the City's sewerline record had mistakenly identified the pipe break area as a low point; consequently, the City did not inspect the pipe break area and did not correct the problem before the break occurred on June 23, 1998. The spill could have been avoided with appropriate and thorough maintenance and inspection by the City Public Works' crews or contractor. However, the City's efforts to proactively

maintain other portions of sewer system warrants a reduction from the maximum civil liability.

- e. Economic benefit or savings: The City did not realize any economic benefit. Therefore, a reduction from the maximum civil liability is warranted.
 - f. Other matters as justice may require: Other matter to consider includes time spent by the Regional Board staff in evaluating the violations and preparing this Order and related documents. The Regional Board charges a rate of \$70 per hour for staff cost recovery. Staff costs to date incurred by the Regional Board total \$3,000.
14. After consideration of the factors listed in Section 13327 and Section 13385(e) of the California Water Code, the Regional Board Executive Officer recommends that civil liability be imposed by the Regional Board in the amount of \$15,000 which includes staff costs of \$3,000. The administrative civil liability of \$15,000 is due and payable on October 23, 1998, subject to the provisions outlined in paragraph No. 15 below.
15. The City may elect to pay up to \$10,000 of the \$15,000 administrative civil liability by committing to supplemental environmental projects (SEPs). In the event that the City chooses to invest in local environmental projects, a proposal for SEPs is due to the Regional Board by October 30, 1998. The proposal for SEPs will be subject to approval of the Executive Officer.
- A cash payment for the remaining \$5,000 of the administrative civil liability is due and payable on October 30, 1998 to the State Water Resources Control Board, Cleanup and Abatement account.
- Should the City's supplemental environmental projects not be approved by Executive Officer, or should the City later fail or elect not to implement supplemental environmental projects, the amount of \$10,000 will be due and payable 30 days after the Executive Officer's determination that the City has fail to comply with requirements of SEPs proposal.
16. This action is exempt from the requirements of the California Environmental Quality Act, California Public Resources Code, Section 21000, et seq., as an enforcement action pursuant to Title 14, CCR, Section 15321.

17. City of Port Hueneme may waive the right to a hearing. Should the City of Port Hueneme choose to waive the right to a hearing, an authorized agent must sign the waiver attached to this Complaint, and return the executed waiver form and a check in the amount of \$15,000 (payable to the State Water Resources Control Board, Cleanup and Abatement Account) to the Regional Board (101 Centre Plaza Drive, Monterey Park, CA 91754) by October 23, 1998. In the event that City of Port Hueneme elects to conduct SEPs, a letter, clearly stating that City will provide a proposal for SEPs, shall be sent along with waiver by October 23, 1998, and a proposal for SEPs and a check in the amount of \$5,000 (payable to the State Water Resources Control Board, Cleanup and Abatement Account) shall be submitted to the Regional Board by October 30, 1998.

DENNIS A. DICKERSON
Executive Officer

Date: October 9, 1998

/RC

WAIVER OF THE RIGHT TO A HEARING

By signing below and attaching a check for the amount of civil liability proposed in Administrative Civil Liability Complaint No. 98-078, the City of Port Hueneme Department of Public Works waives its right to a hearing before the Regional Board. The City of Port Hueneme Department of Public Works understands that it is giving up its right to argue against the allegations made by the Executive Officer in this Complaint, and against imposition of, and the amount of, civil liability imposed. I understand that if an Administrative Civil Liability Order is adopted at the Regional Board meeting on November 2, 1998, payment will be due on December 2, 1998.

Signature: _____

Name: _____

Position: _____

City of Port Hueneme, Department of Public Works

Date: _____